

Magistrate Judge Christel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERBERT D. ZENO,

Defendant.

MAGISTRATE'S DOCKET NO.

MJ13-05037

COMPLAINT for VIOLATIONS
of Title 18, United States Code, Sections
922(g)(1) and 924(a)(2)

BEFORE, David W. Christel, United States Magistrate Judge, Vancouver, Washington.

The undersigned complainant, Detective Tim Martin, Vancouver Police Department, being duly sworn, states:

COUNT ONE

(Felon in Possession of a Firearm)

Beginning at a time unknown, but within the last five years, and continuing until on or about February 1, 2013, in Vancouver, within the Western District of Washington, and elsewhere, HERBERT D. ZENO, having previously been convicted of one or more crimes punishable by imprisonment for a term exceeding one year, including but not limited to one or more of the following crimes:

- a. Controlled Substance Possession, under cause number 05100001437, in Clark County Superior Court, State of Washington, on or about March 10, 2005;

- b. Violation of the Uniform Controlled Substance Act, under cause number 031008541, in Clark County Superior Court, State of Washington, on or about May 28, 2003;
- c. Robbery in the second degree, under cause number 021010253, in Clark County Superior Court, State of Washington, on or about July 10, 2002;
- d. Possession of a Stolen Firearm, under cause number 021010733, in Clark County Superior Court, State of Washington, on or about July 10, 2002;
- e. Possession of a Firearm in the second degree, under cause number 998000353, in Clark County Superior Court, State of Washington, on or about January 19, 1999;

did knowingly possess, in and affecting interstate commerce, a firearm, to wit, a Ruger Blackhawk .357 Magnum caliber revolver, which had been shipped and transported in interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

And the complainant states that this Complaint is based on the following information:

Affiant's Background

1. I am currently a Federal Bureau of Investigations ("FBI") Task Force Officer, and have been so since January of 2010. I am currently a Federally Deputized Officer and have received Title 18 and Title 21 authority. I am also a Detective with the Vancouver Police Department, in Vancouver, Washington, and have been so employed since June 2005. Prior to this, I was an Officer with the Seattle Police Department between the years 2001 and 2005. As part of my duties, I investigate a wide variety of federal criminal violations to include firearm violations in violation of Title 18, United States Code, Section 922. I have received training and gained experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, and various other criminal laws and procedures. I have participated in the execution of search warrants for firearm violations, and

1 have received formal firearms training from Vancouver Police Department, Seattle Police
2 Department, Federal Bureau of Investigation, and the Bureau of Alcohol Tobacco and Firearms.
3 As a result of this training and experience, I am familiar with the techniques and strategies
4 commonly used to commit these violations.

5 2. The information in this affidavit is based on my direct knowledge and information
6 provided by other law enforcement sources. This affidavit does not include everything that I
7 learned during the investigation, but rather only includes enough information to show probable
8 cause.

9 **Background Information on HERBERT D. ZENO**

10 3. I have reviewed HERBERT D. ZENO's criminal history and confirmed that he has
11 the following convictions for felony crimes punishable by over a year of imprisonment:

- 12 a. Controlled Substance Possession, under cause number 05100001437, in Clark
13 County Superior Court, State of Washington, on or about March 10th, 2005;
- 14 b. Violation of the Uniform Controlled Substance Act, under cause number
15 031008541, in Clark County Superior Court, State of Washington, on or about
16 May 28th, 2003;
- 17 c. Robbery in the second degree, under cause number 021010253, in Clark County
18 Superior Court, State of Washington, on or about July 10th, 2002;
- 19 d. Possession of a stolen Firearm, under cause number 021010733, in Clark County
20 Superior Court, State of Washington, on or about July 10th, 2002;
- 21 e. Possession of a Firearm in the second degree, under cause number 998000353, in
22 Clark County Superior Court, State of Washington, on or about January 19th,
23 1999.

24 **Investigation of HERBERT D. ZENO**

25 4. On January 31, 2013, I was investigating an assault in the Vancouver area in which
26 HERBERT D. ZENO was a suspect. A man and his girlfriend reported that ZENO had
27 threatened them with a gun on October 25, 2012. The man reported that ZENO's brother had
28 shot him six times the year before. The witnesses said that ZENO was driving a blue Toyota

1 Camry during the incident. As I was checking police reports, I saw that ZENO had been arrested
2 on January 31, 2013, while driving a blue Toyota Camry. We later learned that the car belonged
3 to D.R., the father of E.R., who is ZENO's girlfriend and the mother of his child.

4 5. ZENO was booked into the Clark County Jail after his arrest. Inmates at the Jail
5 are allowed to make phone calls, and the calls are recorded. I listened to a recorded call between
6 ZENO and his girlfriend, E.R., that was made after ZENO's January 31st arrest. During the call,
7 ZENO asked E.R. to take something out of his car (presumably the blue Camry) and hide it:

8 ZENO: "Hey, hey, did you get my thing out the car?"

9 E.R.: "Yeah."

10 ZENO: "Allright."

11 E.R.: "What do you want me to do with it?"

12 ZENO: "I want you to put that motherfucker up, and don't touch it, don't let nobody
13 know where it's at or nothing."

14 E.R.: "Okay."

15 ZENO: "Put it right under my motherfucking bed, and leave it there under the
16 mattress."

17 E.R.: "Allright baby."

18 6. Based on this information, I obtained a search warrant for the address that ZENO
19 and E.R. lived at, namely, 3330 L Street in Vancouver, Washington. Officers executed the
20 warrant on February 1, 2013. During the service of this warrant, I met with E.R. and read her
21 the *Miranda* warnings. E.R. stated she understood her *Miranda* warnings, and agreed to speak
22 with me about the situation. E.R. has two felony convictions (including one for Forgery) and
23 other criminal history.

24 7. I explained to E.R. that we had a search warrant for her residence, and I explained
25 the jail phone call that I heard. Additionally, I played the portion of the call in which she is
26 speaking with ZENO about hiding the item. E.R. began to cry and stated she had indeed hidden
27 a firearm that had been inside of her car per ZENO's request in this jail call.

28 8. E.R. said that she did not keep ZENO's gun at her home because she was afraid to

1 have a gun in the house with her young child. E.R. said that she gave ZENO's gun to his
2 mother, "M.R.," who lives next door at 3328 L Street. E.R. claimed that she did not know where
3 M.R. had hidden the gun.

4 9. We went next door to M.R.'s house and interviewed her. M.R. has a felony
5 conviction for Forgery and other criminal history. She denied knowing anything about the gun
6 but seemed very nervous. Eventually, she gave us written consent to search her bedroom. Based
7 on that consent, officers searched the bedroom, but limited themselves to searching drawers and
8 the closet. The officers did not move furniture. The officers found nothing. I talked to M.R.
9 again. She seemed more relaxed after the fruitless search, and repeated that she did not know
10 anything about the gun.

11 10. I left M.R.'s house and talked to E.R. again. She admitted that she had lied during
12 our last interview. E.R. said that she and M.R. had hidden ZENO's gun together, and that they
13 had put it under an armoire in M.R.'s bedroom. E.R. told us the gun was black, and that it was
14 wrapped in a red bandanna. E.R. said that we would need to move the armoire out of the way to
15 find the gun. E.R. cried, apologized for lying, and said that ZENO's family would kill her for
16 helping the police find the gun.

17 11. I obtained a search warrant for M.R.'s house, 3328 L Street. Officers searched the
18 house and found a loaded, black Ruger Blackhawk .357 Magnum caliber revolver under the
19 armoire in the bedroom. The Ruger was wrapped in a red bandanna. The Ruger may or may not
20 be the gun that ZENO brandished at the man and his girlfriend in October 2012, as they
21 described a somewhat different handgun.

22 12. On February 1, 2013, at 8:34 p.m., ZENO made a recorded call from the Jail to
23 E.R. ZENO and E.R. talked about the search warrants we had executed earlier that day. At
24 approximately 1:25 into the call, the following conversation can be heard:

25 ZENO: "What happened?"

26 E.R.: "They, umm... found it."

27 ZENO: "Huh?"

28 E.R.: "They found it."

1 ZENO: "Oh my fucking God man."

2 E.R.: "They had me in the car baby, they were taking me in too."

3 ZENO: "Huh?"

4 E.R.: "They had me in the car, they were gonna take me in too."

5 ZENO: "So, they know I had it then."

6 E.R.: "They found it baby"

7 ZENO: "So, I'm going away. I'm fucking going away."

8 E.R.: "Baby, they recorded all of our conversations, they recorded everything, that
9 whole conversation where you told me what to do with it."

10 13. According to Special Agent Jason Brown of the Bureau of Alcohol, Tobacco,
11 Firearms, and Explosives, the Ruger revolver was manufactured outside of the State of
12 Washington. Agent Brown is an interstate nexus expert who has training and experience in
13 determining where firearms were manufactured.

14 14. Based on the foregoing, I respectfully submit there is probable cause to believe
15 that ZENO committed the crime described in Count 1, above, incorporated herein by reference.
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19 TIM MARTIN, COMPLAINANT
20 Detective, Vancouver Police Department

21 Based on the Complaint and Affidavit sworn to before me, and subscribed in my
22 presence, the Court hereby finds that there is probable cause to believe the defendant committed
23 the offense set forth in the Complaint.

24 Sworn to before me and subscribed in my presence, this 19th day of February, 2013.
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27 HON. DAVID W. CHRISTEL
28 UNITED STATES MAGISTRATE JUDGE